

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re SAMIR G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMIR G.,

Defendant and Appellant.

A154859

(Contra Costa County
Super. Ct. No. J16-00573)

ORDER MODIFYING OPINION

BY THE COURT:

It is ordered that the opinion filed herein on April 29, 2019, be modified as follows:

The last sentence in the first paragraph of the Discussion section on page 3 is replaced with, “He argues this violates the separation of powers clause of the California Constitution, as well as his state and federal due process rights.”

This modification does not change the judgment.

Dated: _____ P.J.

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Samir G. (Minor), a ward of the juvenile court under Welfare and Institutions Code¹ section 602, appeals a dispositional order placing him in the Youthful Offenders Treatment Program (YOTP) at juvenile hall. He contends that the juvenile court delegated to the probation department the determination of the length of his commitment. We disagree and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In 2018, while Minor was on probation as a ward of the court, the district attorney filed a supplemental wardship petition charging him with two counts of felony second degree robbery in violation of Penal Code sections 211 and 212.5, subdivision (c). On the same day, the probation department filed a notice of probation violation hearing,

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

alleging that Minor violated the condition of his probation that required him to comply with all laws.

At a contested jurisdiction hearing, the juvenile court determined that although neither count of robbery had been proved beyond a reasonable doubt, one had been proved by a preponderance of the evidence. The court therefore dismissed the supplemental petition and sustained the probation violation.

At disposition, the court continued Minor's wardship with no termination date. Over Minor's objection "to YOTP as it is applied here in our county on the basis of due process," the court ordered Minor committed to custody of the probation department for placement in YOTP at juvenile hall, and ordered Minor to successfully complete all phases of YOTP, follow all treatment requirements, and obey all rules and regulations. Minor's commitment was for a period not exceeding the maximum custodial time of four years and 120 days or until he reached the age of 21, whichever occurs first. Consistent with the juvenile court's comments at the disposition hearing and the YOTP handbook, the parties assume that Minor will be released if and when he successfully completes YOTP.²

Thus, Minor, who was 18 years old at disposition and had credit for 267 days served, was committed to juvenile hall until age 21, with the provision that he will be released earlier upon successful completion of YOTP. Minor timely appealed.

DISCUSSION

Minor contends that in committing him to the custody of the probation department to complete YOTP at juvenile hall (which is "under the management and control of the

² Minor has asked us to take judicial notice of the "YOTP Handbook." The request was unopposed, and we now grant it. The handbook explains that YOTP consists of an orientation program of about four weeks, followed by three phases of at least 12 weeks each, and a final phase of at least six months to be spent on probation outside juvenile hall, with the first 90 days on electronic monitoring. Thus it appears that release from the locked facility of juvenile hall (though not release from probation) requires completion of orientation and the next three phases, rather than completion of the entire YOTP program, but we follow the parties in speaking of release after the successful completion of YOTP.

probation officer,” as provided in section 852), the juvenile court impermissibly delegated to the probation department the authority to determine the length of his commitment. He contends that the probation department, rather than the juvenile court, decides whether he has completed the phases and requirements of YOTP, and therefore whether and when he will be released. He argues this violates the separation of powers clause of the California Constitution, as well as his and violates his state and federal due process.

Minor’s separation of powers argument rests on article III, section 3 of our state Constitution, which provides, “The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” As Minor points out, “[i]t is well settled that courts may not delegate the exercise of their discretion to probation officers.” (*In re Pedro Q.* (1989) 209 Cal.App.3d 1368, 1372.) But “a court may dictate the basic policy of a condition of probation, leaving specification of details to the probation officer.” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 919.) As we will explain, we conclude that the juvenile court here retains the authority to determine the length of Minor’s commitment; it has not delegated that authority to the probation department.

Our colleagues in Division Five of this district recently considered a claim similar to the one before us. (*In re J.C.* (2019) 33 Cal.App.5th 741 [2019 WL 1395914] (*J.C.*).) There, as here, the juvenile court in Contra Costa County committed a minor to YOTP at juvenile hall until his 21st birthday, unless he successfully completed YOTP, in which case he would be released earlier. (*Id.* at p. ___, fn. 8 [*4].) And there, as here, the minor argued that the juvenile court delegated to the probation officer the authority to determine the length of his commitment, because the probation officer would determine whether and when minor completed YOTP. (*Id.* at p. ___ [*2].) The court in *J.C.* held that even though the probation department had day-to-day supervision and control over minor while he was in YOTP, under *In re Robert M.* (2013) 215 Cal.App.4th 1178 (*Robert M.*), the juvenile court retained “the ultimate authority to determine whether and when Minor successfully completes YOTP.” (*J.C.*, *supra*, 33 Cal.App.5th at p. ___ [*2].) In *Robert*

M., appellant challenged an order committing him to complete sex offender counseling at juvenile hall (housed at the Division of Juvenile Facilities) and then return to the juvenile court for possible modification of his sentence. (*Robert M.*, *supra*, 215 Cal.App.4th at p. 1182.) The court in *Robert M.* rejected appellant’s claim that the order “impermissibly intermingles the responsibilities of the probation department and the responsibilities of DJF,” ruling that under the Welfare and Institutions Code the juvenile court, not probation or DJF, retains the ultimate responsibility for the supervision and control of a ward of the court, and retained jurisdiction to determine whether appellant successfully completed the sex offender program. (*Id.* at p. 1185, citing § 727, subd. (a).) The court in *J.C.* concluded that the juvenile court retained ultimate authority to determine whether *J.C.* successfully completed YOTP, just as the juvenile court in *Robert M.* retained the ultimate authority to determine whether appellant successfully completed sex offender counseling. (*J.C.*, *supra*, 33 Cal.App.5th at p. ____ [2019 WL 1395914 *2].)

The court in *J.C.* noted that the YOTP handbook supported its analysis. (*J.C.*, *supra*, 33 Cal.App.5th at p. ____ [2019 WL 1395914 *3].) Like the handbook in the record before us, it stated, “ ‘Your commitment, as ordered by the court is for the maximum custody time allowed based on your charges or a period not to exceed your 21st birthday, whichever comes first. A court review will be set by your Deputy Probation Officer prior to your successful completion of phase three, your DPO [Deputy Probation Officer] will then inform the court of your progress, and whether you *should* be released to Phase Four, GPS Supervision / Community Aftercare.’ ” (*Ibid.*) We agree with our colleagues that “[t]his description plainly contemplates the probation officer will provide the juvenile court with an opinion about whether the minor has successfully completed the program and will make a recommendation to the court regarding the minor’s release. The court will then make the final determination on these issues.” (*Ibid.*)

We find the analysis in *J.C.* persuasive, and on similar facts we reach the same conclusion: contrary to Minor’s contentions, the juvenile court did not delegate to the probation department the court’s authority to determine the length of Minor’s

commitment.³ Accordingly, even if we assume that delegation of that authority would violate the separation of powers doctrine, an issue that we do not reach, Minor has not shown that the disposition order violates the separation of powers doctrine.

Minor’s due process argument rests on his contention that by vesting the probation department with discretion to determine whether he has successfully completed YOTP, the juvenile court circumvents section 777 and prevents judicial review of the length of his commitment. Like Minor’s separation of powers argument, this is unpersuasive: the juvenile court retains the authority to determine whether and when Minor successfully completes YOTP. Furthermore, section 777, which requires that “ ‘[a]n order changing or modifying a previous order by removing a minor from the physical custody of a parent . . . and directing . . . commitment to a county institution . . . shall be made only after a noticed hearing,’ ” had no bearing on Minor’s case, because nothing in the disposition order authorizes the probation department to change or modify a previous order, or to remove Minor from his parent’s physical custody. (*J.C.*, *supra*, 33 Cal.App.5th at p. ___, fn. 8 [2019 WL 1395914 *4, fn. 8].)

To the extent Minor suggests that the probation department might unfairly evaluate his performance in YOTP, Minor (or his parent or attorney) retains the ability to raise that issue before the juvenile court by filing a petition under section 778 to change, modify or set aside its order on the grounds of a changed circumstance; for example, he could claim that the department’s assessment “constitute[s] a changed circumstance from the implicit assumption in the dispositional order that the probation officer will fairly

³ The facts of our case and *J.C.* differ in this respect: at the disposition hearing in *J.C.*, the juvenile court set a review hearing seven months after disposition “to see how [Minor] is doing” at YOTP. (*J.C.*, *supra*, 33 Cal.App.5th at p. __ [2019 WL 1395914 at *2].) At disposition in our case, no review hearing was set. But the setting of a hearing is not dispositive. The Court of Appeal noted that the setting of the review hearing in *J.C.* “*further* undermine[d]” appellant’s contention that the juvenile court had delegated to the probation department the authority to determine whether he had successfully completed YOTP. (*Id.* at p. __ [*3], *italics added.*) In our case, Minor’s trial counsel did not request that a review hearing be set, and Minor does not contend on appeal that the court erred by failing to set a hearing.

assess Minor's performance.” (*J.C., supra*, 33 Cal.App.5th at p. __ [2019 WL 1395914 *4]; see § 778, subd. (a)(1).)

DISPOSITION

The order appealed from is affirmed.

Miller, J.

We concur:

Kline, P.J.

Richman, J.

A154859, *People v. Samir G.*